IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1712 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT MUNI. CORPN

Versus

KESHUPURI DUNGARPURI

Appearance:

1. Special Civil Application No. 1712 of 1994

M/S TRIVEDI & GUPTA for Petitioner No. 1

MRS DT SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 22/06/2004

ORAL JUDGEMENT

1. The Rajkot Municipal Corporation has challenged in this petition under Article 227 of the Constitution of

India the judgment and award dated 19th June, 1993 made by the Presiding Officer, Labour Court, Rajkot in Reference (LCR) No. 76 of 1985. By the said award the Labour Court has held that the order removing respondent from service passed by the petitioner dated 30th September, 1981 was in violation of section 25 (F) of the Industrial Disputes Act (for short 'the Act') and it was illegal. The Labour Court has, therefore, quashed and set aside the said order and directed the petitioner to reinstate the respondent on his original post and to pay to him back wages at the rate of 20% from 30th September, 1981 till reinstatement.

2. The facts transpire from the judgment of the Labour Court are that the respondent was working with the petitioner since 1st October, 1978 and he was assigned duty in Janata Baug. His appointment was on daily wage basis and he was being paid Rs.12.40 ps. as daily wage. It is a case of respondent that without any justifiable reason on 30th September, 1981 he was relieved from the service without following any procedure. According to him, neither any salary was paid to him towards retrenchment compensation in accordance with the provisions of section 25 (F) of the Act nor any pay in lieu of notice was paid to him. In view of the said order, the respondent raised industrial dispute, which was sent to the Assistant Labour Commissioner, Rajkot for conciliation. However, the conciliation failed and failure report was duly submitted to the Government. Thereupon Reference under section 10 of the Act was made.

2.1. Upon issuance of notice to the respondent by the Labour Court, he filed his statement of claim wherein he reiterated the same facts and challenged his termination on the ground that it was illegal and without any reason and prayed for reinstatement on the original post and full back wages. The said claim was contested by the petitioner by filing reply at Exh. 11. According to the petitioner, the respondent was working as daily wager and from 18th September, 1981 he had stopped reporting for duty. Since he had voluntarily abandoned the job, there was no question of paying retrenchment compensation or salary in lieu of the notice. According to the petitioner, the reference had no substance it deserved to be dismissed.

2.2. At the trial, the respondent produced documentary evidence at Exh. 6 and also examined himself. So far the petitioner is concerned, it examined one Chhelshankar Mohanlal Thakar to substantiate the averments made in the written statement. It also produced documentary

evidence.

2.3. The Labour Court, at the end of the trial, came to the conclusion that the respondent had rendered 3 years service from 1st October, 1978 to 30th September, 1981. It also came to the conclusion that before terminating the service of the respondent, the petitioner was required to comply with the provisions of section 25 (F) of the Act. It also turned down the averment of the petitioner that the respondent had voluntarily abandoned the service. The Labour Court, therefore, quashed and set aside the order of termination of service on the ground of it being illegal and since it violated the provisions of section 25 (F) of the Act. On the question of back wages, the Labour Court took into consideration the evidence of respondent and fact that after he was relieved from the service of the petitioner, he was gainfully employed elsewhere and during that period he was earning Rs.300/= to Rs.400/= per month. Keeping all these circumstances in view, the Labour Court ultimately allowed the reference partly and issued aforesaid direction to the petitioner. It is this award which is now under challenge before this Court.

3. Mr. K.B. Naik, learned advocate appearing for M/s. Trivedi & Gupta for the petitioner has submitted that the judgment and award of the Labour Court are erroneous in as much as there was no material on record to show that the respondent had rendered continuous service from 1st October, 1978 to 30th September, 1981. He has further submitted that when the respondent had not completed the requisite service of 240 days or more in a year, the provisions of section 25 (F) of the Act would not apply and, therefore, the petitioner was under no obligation to comply with the same. He has also submitted that so far award of back wages to the extent of 20% is concerned, the order is illegal because the respondent himself has admitted in his evidence that he was earning Rs.300/= to Rs.400/= per month after termination of his service by the petitioner.

3.1. As against that, Mrs. D.T. Shah, learned advocate for the respondent has supported the judgment and award of the Labour Court and has also submitted that the conclusions drawn by the Labour Court are just and proper and they do not call for any interference by this Court in a petition under Article 227 of the Constitution of India. She has, therefore, submitted that this petition has no merit and it deserves to be dismissed.

4. Having carefully gone through the record of this

petition and having carefully considered the rival submissions, it is clear that the respondent had joined the service of petitioner on 1st October, 1978 and he was out of service since 30th September, 1981. According to the petitioner, the respondent had voluntarily abandoned the service; whereas according to the respondent, without any justifiable reason, the petitioner had terminated his service without following any procedure. The Labour Court, after considering the entire material before it including oral evidence of the witnesses, has come to the conclusion that the respondent had rendered continuous service to the petitioner from 1st October, 1978 till 30th September, 1981. It has also come to the conclusion that there was not plausible reason why the service of the respondent was required to be terminated. The petitioner has not come out with any explanation or reason why it had not continued the service of the respondent. In these circumstances, the Labour Court has held the order of termination of service to be illegal. These conclusions have been drawn after referring to the oral evidence on record. These are all questions of fact. It is, therefore, difficult for me to reappreciate the questions of fact and the material produced before the Labour Court in a petition under Article 227 of the Constitution of India. It appears that no error apparent on the face of the record is committed by the Labour Court. When the Labour Court has found that the respondent had rendered service from 1st October, 1978 till 30th September, 1981, it is obvious that in such circumstances the petitioner was required to comply with the provisions of section 25-F of the Act. The case of the petitioner that the respondent had voluntarily abandoned the service is found to be not true by the Labour Court. In that event, it was incumbent upon the petitioner to comply with the aforesaid provisions before terminating the service of the respondent. That has not been done. Naturally the order will be rendered illegal for noncompliance of the mandatory provisions of section 25 of the Act. When that is so, the Labour Court was completely justified in quashing the same on the ground of it being illegal and no interference is required by this Court on that count.

4.1. So far the award of 20% of back wages is concerned, the Labour Court has properly applied its mind to the material produced before it and in particular the evidence of the respondent. No-doubt, it is true that in the evidence the respondent has stated that he was receiving approximately Rs.300/= per month after he was relieved from the service. However, that was merely a rough estimate that has been given. The Labour Court,

however, has found that against the demand of 100% back wages, the ends of justice would meet if the 20% of back wages is granted. In my opinion, no illegality has been committed by the Labour Court in passing such direction. The submission of Mr. Naik, therefore, cannot be accepted.

4.2. It may also be noted that at the time of admitting this petition, this Court had granted interim relief only to the extent of payment of back wages, staying the award with regard to payment of back wages. The order of reinstatement was not stayed. Therefore, Mrs. Shah states that the respondent has already been reinstated by the petitioner in service.

5. Considering the overall view of the entire case, it clearly appears that the judgment and award of the Labour Court are just and proper and they are not required to be disturbed. Hence, this petition has no merit and it is ordered to be dismissed. Rule discharged with no order as to costs. Interim relief stands vacated.

[AKSHAY H. MEHTA, J.]

* Pansala.